obtained, and allowing applicants to begin coordination with Quiet Zone entities in advance of filing an application with the Commission.

On September 27, 2004, the Commission released the *Rural R&O and FNPRM*, adopting measures to facilitate the deployment of wireless services in rural areas including the elimination of the cellular cross-interest rule in RSAs and an increase in permissible power levels for base stations in certain wireless services that are located in rural areas or that provide coverage to otherwise unserved areas.[68] In lieu of the cellular cross interest rule, the Commission adopted new reporting requirements in section 1.919 for use in conjunction with a case-by-case approach to reviewing substantial transfers or assignments.

Comments

No comments were filed with respect to this subpart.

Recommendation

The Part 1, subpart F rules establish general procedural requirements applicable to our many different wireless services, and do not contain substantive rules affecting any particular service. As such, the need and purposes for these rules are not directly affected by competitive developments that guide our Section 11 analysis. Accordingly, pursuant to our Section 11 biennial review, we do not find that this rule subpart is "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service."

[68] *Rural R&O and FNPRM*, 19 FCC Rcd 19078 (2004).

PART 1, SUBPART I – PROCEDURES IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

Description

Part 1, Subpart I of the Commission's rules[69] implements the requirements of the National Environmental Policy Act (NEPA)[70] as well as a series of other federal environmental laws, including the Endangered Species Act of 1973, as amended,[71] the National Historic Preservation Act of 1966 (NHPA),[72] the Wilderness Act of 1964, as amended,[73] statutory provisions relating to Indian religious sites,[74] and the Wildlife Refuge Laws.[75] In addition, the Commission's environmental rules implement Executive Orders regarding flood plains and wetlands regulation.[76] By statute and regulations of the Council on Environmental Quality (CEQ),[77] the Commission is responsible for ensuring compliance with these laws. The rules identify certain special issues for consideration, including the impact of high-intensity white lights on towers in residential neighborhoods[78] and the effect of radio frequency emissions on the human environment.[79]

Purpose

The purpose of the Commission's environmental rules is to implement NEPA, other federal environmental laws, and executive orders, and to identify those sensitive environmental issues which Commission licensees, applicants, and certain third parties must address. The Commission complies with NEPA by requiring its licensees to assess and, if found, report the potential environmental consequences of their proposed projects.

If certain actions, such as the construction of a tower, might affect the environment in one or more of the ways described in the rules, the licensee or applicant is required to consider the potential environmental effects of its project, describe those potential effects

[69] The Commission's environmental rules are codified at 47 C.F.R. §§ 1.1301-1.1319.

[70] 42 U.S.C. §§ 4321-4347.

[71] 16 U.S.C. §§ 1531-1543.

[72] 16 U.S.C. §§ 470 *et seq.*

[73] 16 U.S.C. §§ 1131-1136.

[74] 42 U.S.C. § 1996.

[75] 16 U.S.C. § 668dd.

[76] *See* Executive Order 11988, 42 Fed Reg. 26,951 (May 24, 1977), *reprinted as amended in* 42 U.S.C. § 4321 note (floodplains); Executive Order 11990, 42 Fed Reg. 26,961 (May 24, 1977), *reprinted as amended in* 42 U.S.C. § 4321 note (wetlands).

[77] 40 C.F.R. §§ 1500-1508.

[78] 47 C.F.R. § 1.1307(a)(8).

[79] 47 C.F.R. § 1.1307(b).

in an environmental assessment (EA), and file that document with the Commission.[80] The Commission has concluded that actions not identified in its rules are categorically excluded from environmental review.[81] The Commission's environmental rules explain what information is required in an EA,[82] the methods for the public to file objections to EAs,[83] and those situations in which a full environmental impact statement must be completed,[84] as required by NEPA.

Comments

No comments were filed with respect to this Subpart.

Analysis

The Part 1, subpart I rules are beyond the scope of the Biennial Review proceeding. These Commission rules implement NEPA,[85] as well as other federal environmental laws and executive orders.[86] The rules were not promulgated under the Communications Act of 1934, as amended, and therefore are not part of the Biennial Review.[87]

It is worth noting, however, that on October 5, 2004, the Commission released a *Report and Order* to implement a Nationwide Programmatic Agreement to be signed by the Commission, the Advisory Council on Historic Preservation ("Advisory Council") and the National Conference of State Historic Preservation Officers.[88] The Nationwide Agreement, as authorized by Section 214 of the National Historic Preservation Act of 1966 ("NHPA") and Section 800.14(b) of the Advisory Council's rules, streamlines and tailors the Section 106 NHPA review process for communications towers and other Commission-licensed facilities. It eliminates reviews under Section 106 of the National Historic Preservation Act where the potential for impact upon historic sites is quite unlikely, and it clarifies and streamlines the review process for those undertakings that remain subject to review. Specifically, the following categories of undertakings have been excluded from the Section 106 review process: enhancements to towers;

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[80] 47 C.F.R. § 1.1307(a).

[81] 47 C.F.R. § 1.1306.

[82] *See* 47 C.F.R. §§ 1.1308, 1.1311.

[83] 47 C.F.R. § 1.1313.

[84] 47 C.F.R. §§ 1.1314-1.1319.

[85] *See* 47 C.F.R. § 1.1301 (stating that provisions of Part 1, Subpart I of the Commission's rules implement Subchapter I of NEPA).

[86] 47 C.F.R. § 1.1307(a).

[87] Section 11 of the Communications Act instructs the Commission to review "all regulations issued *under this Act* . . ." 47 U.S.C. § 161 (emphasis added).

[88] In the Matter of Nationwide Programmatic Agreement Regarding The Section 106 National Historic Preservation Act Review Process, WT Docket No. 03-128, *Report and Order* (FCC 04-222, rel. Oct. 5, 2004).

replacement and temporary towers; certain towers constructed on industrial and commercial properties or utility corridor rights-of-way; and construction in SHPO/THPO-designated areas.

PART 1, SUBPART Q – COMPETITIVE BIDDING PROCEEDINGS

Description

Subpart Q implements section 309(j) of the Communications Act of 1934, as added by the Omnibus Budget Reconciliation Act of 1993[89] and amended by the Balanced Budget Act of 1997.[90] Subpart Q sets forth rules governing the mechanisms and procedures for competitive bidding to assign spectrum licenses.

Purpose

The purpose of subpart Q is to establish a uniform set of competitive bidding rules and procedures for use in licensing of all services that are subject to licensing by auction. The rules in this subpart: (1) describe which services are subject to competitive bidding; (2) provide competitive bidding mechanisms and design options; (3) establish application, disclosure and certification procedures for short- and long-form applications; and (4) specify down payment, withdrawal and default mechanisms.

In addition, subpart Q contains rules by which the Commission determines eligibility for "designated entity" (*i.e.*, small business) status, and includes a schedule of bidding credits for which designated entities may qualify in those auctions in which special provisions are made for designated entities.[91] The purpose of these provisions is to implement section 309(j)(3)(B) of the Act, which states that an objective of designing and implementing the competitive bidding system is to "promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration in licenses and disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women."[92]

Analysis

Status of Competition

As noted above, the Part 1, subpart Q rules pertain to procedural requirements relating to the many wireless radio services regulated pursuant to other specific rule parts addressed in our rule part analysis. Accordingly, we do not address here the status of competition in specific wireless radio services, but instead will address this issue in the context of rule parts affecting particular services, discussed *infra.*

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[89] *See* Omnibus Budget Reconciliation Act of 1993, Pub. Law No. 103-66 (1993).

[90] *See* Balanced Budget Act of 1997, Pub. Law No. 105-33, § 3002, 111 Stat. 251 (1997) (amending 47 U.S.C. § 309(j)).

[91] In service-specific rule making proceedings, the Commission continues to establish the appropriate size standards for each auctionable service.

[92] 47 U.S.C. § 309(j)(3)(B).

Advantages

The subpart Q competitive bidding rules establish procedures for the efficient licensing of spectrum. Use of auction procedures allows for substantially faster licensing and lower costs than alternative licensing methods such as comparative hearings, and is more likely to result in award of licenses to those entities that value the spectrum the most and will use it most efficiently. Auction rules also enable the Commission to recover a portion of the value of the spectrum for the benefit of the public.

Subpart Q is the result of the Commission's consolidation of its auction rules in the Part 1 rulemaking proceeding, WT Docket No. 97-82. Prior to the Part 1 proceeding, the Commission implemented service-specific auction rules for each new auctioned service. Consolidating the auction rules in Part 1 has resulted in more consistency and predictability in the auctions process from service to service.

Disadvantages

The auction rules in this subpart impose certain transaction costs on auction participants (aside from the obligation on the winning bidder to pay the amount bid). These auction-related costs may be somewhat higher than the cost of filing a lottery application but significantly less than the cost of a comparative hearing.[93] In addition, certain aspects of the auctions process (*e.g.*, setting of minimum opening bid amounts, bid increments, and bidding credit levels) still require service-specific notice and comment prior to each individual auction.

Recent Efforts

The Commission has made several changes to the competitive bidding rules of subpart Q since the release of the 2002 Biennial Review. In the *Second Order on Reconsideration of the Part 1 Third Report and Order* and *Part 1 Fifth Report and Order,* the Commission: clarified that personal net worth, including personal income, of an applicant's officers and directors will not be attributed to the applicant for purposes of calculating an applicant's gross revenues; provided that under certain narrow circumstances the gross revenues of affiliates of directors and officers of rural telephone cooperatives need not be attributed to the cooperative; modified the Part 1 default payment rule to incorporate the combinatorial bidding default rule previously adopted for combinatorial auctions in the 700 MHz bands; made certain conforming and technical edits, including a reorganization of section 1.2112(a) for greater clarity.[94] The changes regarding gross revenues attributed to rural telephone cooperatives addressed the substance of comments filed by National Telecommunications Cooperative Association

[93] *See FCC Report to Congress on Spectrum Auctions*, WT Docket No. 97-150, *Report*, FCC 97-353, Section III, at 8 (rel. October 9, 1997) (citing studies estimating costs of $800 per application under the lottery system and $130,000 per application under the comparative hearing process).

[94] *See* Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Second Order on Reconsideration of the Third Report and Order* and *Order on Reconsideration of the Fifth Report and Order*, FCC 03-98 (rel. May 8, 2003)

in conjunction with the 2002 Biennial Review. The Bureau is currently addressing petitions for reconsideration submitted in response to the *Order on Reconsideration of the Part 1 Fifth Report and Order*. These petitions seek expansion or clarification of the exception for attribution of affiliate gross revenues to rural telephone cooperatives.

After the release of the 2002 Biennial Review, the Bureau denied petitions for reconsideration of the *Second Order on Reconsideration of the Part 1Third Report and Order.*[95] In part, the Bureau clarified that the default obligations of licensees paying winning bids in installments are not mitigated by subsequent winning bids for licenses authorizing use of the same spectrum.

Comments

No comments were filed with respect to this rule part.

Recommendation

The subpart Q rules only pertain to general procedural requirements relating to competitive bidding in various different wireless services, and not to the substantive rules affecting any particular service. As such, the need and purposes for these rules are not directly affected by competitive developments that guide our Section 11 analysis. Accordingly, we do not find that this rule subpart is "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service."

While staff generally determines that Part 1, subpart Q rules remain necessary in the public interest, as part of the 2002 Biennial Regulatory Review, staff concluded that section 1.2111(a), which requires transactions documents to be filed with certain applications to transfer control or assign licenses, may no longer be necessary in the public interest and accordingly recommended a revision. More particularly, staff recommended that the Commission adopt a recommendation by prior commenters this rule be revised to eliminate the requirement that applicants for transfers of control or assignments of licenses obtained through competitive bidding file transaction documents with the Commission. For the reasons discussed in the 2002 Biennial Regulatory Review, and incorporated by reference herein, staff continues to recommend the previously proposed revision to section 1.2111(a).[96]

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[95] *See* Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Order on Reconsideration of the Third Report and Order*, 19 FCC Rcd 2551 (2004).

[96] *2002 Biennial Review Staff Report,* 18 FCC Rcd at 4276-77.

PART 1, SUBPART X – SPECTRUM LEASING

Description

Part 1, Subpart X, establishes rules to enable spectrum users to gain access to licensed spectrum by entering into different types of spectrum leasing arrangements with licensees in most Wireless Radio Services. In addition, this subpart contains rules that streamline the Commission's approval procedures for license assignments and transfers of control in most Wireless Radio Services.

Purpose

Part 1, Subpart X rules are intended to significantly expand and enhance secondary markets to permit spectrum to flow more freely among users and uses in response to economic demand, to the extent consistent withallowing more flexible use of spectrum by licensees and other spectrum users, better defining licensees' and spectrum users' rights and responsibilities, enabling use of spectrum across various dimensions (frequency, space and time), promoting the efficient use of spectrum, and providing for continued technological advances.

Analysis

Status of Competition

Because the rules in Part 1, Subpart X, became effective only in the 2003-2004 period, it is too early to assess status of competition with respect to this subpart.

Advantages

These rules are intended for the express purpose of promoting efficient use of spectrum through the elimination of barriers to the development of secondary markets. These flexible policies continue our evolution toward greater reliance on the marketplace to expand the scope of available wireless services and devices, leading to more efficient and dynamic use of the important spectrum resource to the ultimate benefit of consumers. Facilitating the development of these secondary markets enhances and complements our efforts to encourage the development of broadband services, promote increased facilities-based competition among service providers, enhance economic opportunities and access for the provision of communications services by designated entities, and enable development of additional and innovative services in rural areas.

Disadvantages

The Part 1, Subpart X rules include streamlined processing procedures for assignments and transfers that will need to be assessed for workability and effectiveness over time. Additionally, we need to determine, over time, whether a correct balance has been achieved between our desire to maximize market-based access opportunities and our need to fulfill our statutory mandates with respect to assignments and transfers.

Recent Efforts

40. In 2003, in the *Secondary Markets Report and Order* in WT Docket No. 00-230, the Commission took action to remove unnecessary regulatory barriers to the development of secondary markets in spectrum usage rights, and created Part 1, Subpart X.[97] In 2004, the Commission adopted the *Secondary Markets 2nd Report and Order*, which further streamlined the processing of certain spectrum leasing and transfer/assignment applications and authorized licensees to make spectrum available to third-party users on a "private commons" basis.[98]

Comments

None.

Recommendation

Staff recommends retention of these rules, as they are intended to foster competition.

[97] In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20604 (2003) (*Secondary Markets Report and Order*).

[98] In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, *Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, 19 FCC Rcd 17503 (2004) (*Secondary Markets 2nd Report and Order*).

PART 17 – CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURES

Description

Part 17, which implements Section 303(q) of the Communications Act of 1934, as amended,[99] establishes the procedures by which the Commission registers and assigns painting and lighting requirements to those antenna structures that may pose a physical hazard to aircraft.[100] The rules require registration, evaluation, and approval by the Commission, in conjunction with the recommendations of the Federal Aviation Administration (FAA), of any proposed construction or modification of an antenna structure that is a potential hazard to aircraft. The rules also require tower owners to paint and light their antenna structures as necessary to protect air navigation.

The Antenna Structure Registration procedures set forth in Part 17 are distinct from the FCC's licensing functions. The registration of an antenna structure that affects air navigation is a pre-condition to FCC licensing of radio facilities at a particular site.[101]

Purpose

Part 17 rules ensure that tower owners do not construct structures that may pose a hazard to air navigation, and FCC licensees do not site facilities on such structures until the antenna structures comply with federal aviation safety requirements.

Analysis

Status of Competition

Because the rules in this Part address air navigation safety issues, general competitive developments in the services to which these rules apply do not affect the need for these rules.

Advantages

These rules are limited to those classes of antenna structures that may reasonably be expected to pose an air safety hazard (generally, antenna structures that are taller than 200 feet or that are in close proximity to airports). Antenna structure owners are responsible for compliance with the rules; thus there is a single point of contact for a particular antenna structure. This eliminates the need for each party on a multi-tenant structure to undertake the registration process.

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[99] 47 U.S.C. § 303(q).

[100] 47 C.F.R. Part 17.

[101] Section 17.5 exempts geographically licensed services from this requirement. *See* 47 C.F.R. § 17.5.

Disadvantages

The Part 17 rules may delay the commencement of service when proposed facilities must be studied by the FAA and registered by the Commission prior to construction.

Recent Efforts

None.

Comments

PCIA filed comments suggesting changes to the following Part 17 Rules: Sections 17.2, 17.4, 17.23, 17.47, 17.50, 17.51 and 17.57.[102] Specifically, PCIA commented as follows:

> **Section 17.2**: PCIA contends that the current definition of "antenna structure" (and "antenna structure owner") is too broad.[103] The current definition includes carrier transmission facilities that are neither owned, nor controlled by tower/infrastructure providers. As such, PCIA believes that the compliance obligations of licensed carriers and unlicensed infrastructure providers become ambiguous, resulting in wasteful, duplicative compliance efforts by both entities.
>
> **Section 17.4(f)**: PCIA notes that the current rule requires structure owners to immediately provide paper copies of FCC Form 854R to each permittee and tenant licensee. Given that the required 854R information is currently posted on the ULS website, PCIA recommends that Section 17.4(f) should be revised so that permittees and licensees may instead obtain a copy of Form 854R from the website.
>
> **Section 17.23**: PCIA states that the current rules reference an FAA Advisory Circular that has been superseded (AC 70/7460-1J – making compliance with the painting and lighting provisions in that circular mandatory). PCIA encourages the Commission to revise Rule 17.23 to conform its requirements to those of the FAA on an ongoing basis, especially since these matters affect public safety.
>
> **Section 17.47**: PCIA notes that the current rule requires that all automatic or mechanical control devices, indicators and alarm systems be inspected at intervals not to exceed three months. PCIA argues that in today's environment, those systems are automatically monitored in a near "real-time" continuous fashion by centralized Network Operation Control ("NOC") centers and do not require quarterly physical inspections. PCIA suggests elimination or substantial revision of this requirement.

[102] Comments of PCIA – The Wireless Infrastructure Association (PCIA) filed July 12, 2004.

[103] We note that the Commission's rules do currently define separately "antenna structure" in Section 17.2(a) and "antenna structure owner" in Section 17.2(c).

Section 17.50: PCIA recommends that the current rule be harmonized with the FAA's rules regarding cleaning or repainting towers as often as necessary to maintain good visibility. PCIA states that the Commission's rules provide no standard for measuring good visibility. PCIA suggests that our rule be revised to reflect the standard used by the FAA. In particular, PCIA recommends that the FCC revise Rule 17.50 to state that visibility standards are met if the paint on the structure is within the color tolerance depicted on the FAA's "In Service Aviation Orange Tolerance Chart," as measured against the base of the tower from a distance of ¼ mile.

Section 17.51: PCIA recommends that the current rule be harmonized with the FAA's treatment of malfunctioning top steady or flashing obstruction lights. That is, PCIA believes that Rule 17.51 should be revised to provide that a malfunctioning top steady light or any malfunctioning flashing light does not violate Rule 17.51, so long as a NOTAM (notification of the malfunctioning of a light) has been sought by the tower owner or operator and issued by the FAA. PCIA suggests that the rule should also provide that Section 17.51 is not violated when a malfunction is beyond the control of the tower owner/operator (such as in a power failure).

Section 17.57: PCIA recommends that the current rule be harmonized with the FAA's procedures. This section requires that the owner of a registered tower notify the FCC within 24 hours of construction or dismantlement of a tower/structure. It also requires such a registrant to notify the FCC within 24 hours of any change in ownership. PCIA suggests that the rule be revised to comply with the FAA's treatment of such actions.

Cingular and CTIA filed Reply Comments in support of PCIA's recommended changes.[104] CTIA further recommended that any Part 17 changes reflect the competitive nature of the wireless industry, streamline the siting of wireless communications structures and antennas, provide frequent and timely coordination with FAA rules and procedures, and facilitate the siting of wireless communications structures.[105]

Recommendation

Part 17 rules pertain to air navigation safety issues. As such, competitive developments have not affected the need for this rule part. Accordingly, we do not find that this rule part is "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service."

[104] Reply Comments of Cingular Wireless, LLC (Cingular) filed August 16, 2004; Reply Comments of CTIA – The Wireless Association (CTIA) filed August 12, 2004.

[105] Reply Comments of CTIA – The Wireless Association (CTIA) filed August 12, 2004.

While staff generally concludes that Part 17 rules remain necessary in the public interest, it nonetheless also concludes that certain modifications may be in the public interest for reasons other than those related to competitive developments that fall within the scope of Section 11 review. Staff recommends that the Commission initiate a proceeding in part to consider the specific recommendations of PCIA and others with respect to Part 17. Such a proceeding would examine the Part 17 rules to modify or eliminate, without compromising public safety goals, any rules which create unnecessary administrative burdens or are apt to confuse owners and licensees who attempt to comply with our Part 17 rules.

PART 20 – COMMERCIAL MOBILE RADIO SERVICES

Description

This rule part sets forth the requirements and conditions applicable to commercial mobile radio service providers. It is comprised of the following sections:

§ 20.1	Purpose.
§ 20.3	Definitions.
§ 20.5	Citizenship.
§ 20.6	CMRS spectrum aggregation limit.
§ 20.7	Mobile services.
§ 20.9	Commercial mobile radio service.
§ 20.11	Interconnection to facilities of local exchange carriers.
§ 20.12	Resale and roaming.
§ 20.13	State petitions for authority to regulate rates.
§ 20.15	Requirements under Title II of the Communications Act.
§ 20.18	911 Service.
§ 20.19	Hearing aid-compatible mobile handsets.
§ 20.20	Conditions applicable to provisions of CMRS service by incumbent Local Exchange Carriers.

Comments

Any comments are noted section-by-section in the following analysis of each rule section in Part 20 relevant to the Biennial Review.

Analysis

Staff recommendations are noted section-by-section in the following analysis of each rule section in Part 20 relevant to the Biennial Review.

PART 20 – COMMERCIAL MOBILE RADIO SERVICES, SECTION 20.6 – CMRS SPECTRUM AGGREGATION LIMIT

Description

Section 20.6[106] limited the amount of broadband PCS, cellular, and commercial SMR spectrum that any entity could control or influence in a significant way in a common geographic area. The rule (commonly known as the "spectrum cap") further defined the types of ownership and other interests that were attributable under the cap.

On December 18, 2001, the Commission adopted a *Report and Order* that eliminated the spectrum cap effective January 1, 2003.[107] The Commission decided that it should move from the use of an inflexible spectrum aggregation limit to case-by-case review of spectrum aggregation involved in the acquisition of spectrum used for mobile telephony.[108] The Commission determined, however, that a sunset period was necessary in order to prepare for case-by-case review.[109] The sunset period was codified in Section 20.6(f) of the rules.[110] The Commission raised the spectrum cap to 55 MHz in all areas for the duration of the rule's existence to address carriers' concerns about near-term spectrum capacity constraints in the most constrained urban areas.[111]

Comments

No comments were filed with respect to this rule.

Analysis

Because this rule has sunset, no further review of the rule is necessary as part of this Biennial Review. Staff recommends that this rule be removed from the Code of Federal Regulations.

[106] 47 C.F.R. § 20.6.

[107] *See* 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01-14, *Report and Order*, 16 FCC Rcd 22668 (2001) (*Spectrum Aggregation Limits Order*).

[108] *See Spectrum Aggregation Limits Order*, 16 FCC Rcd at 22670-71.

[109] *See id.* at 22669.

[110] 47 C.F.R. § 20.6(f).

[111] *See id.* at 22669-70.

PART 20, SECTION 20.11 – INTERCONNECTION TO FACILITIES OF LOCAL EXCHANGE CARRIERS

Description

Section 20.11 codifies section 332(c)(1)(B) of the Act,[112] which was enacted by Congress as part of the Omnibus Budget Reconciliation Act of 1993.[113] Section 20.11[114] provides that local exchange carriers (LECs) must provide reasonable interconnection to commercial mobile radio service (CMRS) providers on request, and that LECs and CMRS providers must each reasonably compensate the other for terminating traffic that originates on their respective facilities.

In the Telecommunications Act of 1996, Congress added sections 251 and 252 to the Act. These statutory provisions establish interconnection rights among all telecommunications carriers, and set forth terms and conditions under which interconnection must be provided by one carrier to another.[115] While enacting sections 251 and 252, Congress also left section 332(c)(1)(B) of the Act intact. In the 1996 *First Local Competition Order*, the Commission codified new interconnection rules in Part 51 as part of its implementation of sections 251 and 252.[116] The Commission also concluded that, in light of Congress' retention of section 332(c)(1)(B), the Commission retained separate authority over LEC-CMRS interconnection pursuant to that section. [117] Because the Commission viewed sections 251, 252, and 332 of the Act as furthering a common goal with respect to interconnection, the Commission declined at that point to act further on or define the scope of its section 332 interconnection authority, but instead amended section 20.11 to require that LECs and CMRS providers comply with the interconnection rules in Part 51.[118]

Section 20.11 is organized into three lettered sub-parts: Subsection (a) requires LECs to provide the type of interconnection requested by mobile radio service providers, within reason. Subsection (b) requires LECs and CMRS providers to compensate each other reasonably for terminating traffic that originates on each other's facilities. Subsection (c) requires LECs and CMRS providers to comply with the Part 51 interconnection rules.

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[112] 47 U.S.C. § 332(c)(1)(B).

[113] *See* 47 U.S.C. § 332.

[114] 47 C.F.R. § 20.11.

[115] *See* 47 U.S.C. §§ 251, 252.

[116] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-68, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order*, 11 FCC Rcd 15499, 16195 (1996) (*Local Competition First Report and Order*).

[117] *Local Competition First Report and Order*, 11 FCC Rcd at 16005, ¶ 1023.

[118] 47 C.F.R. § 20.11(c). *See also Local Competition First Report and Order*, 11 FCC Rcd at 16195.

Purpose

The purpose of the LEC-CMRS interconnection rule is to promote competition in the telecommunications market by ensuring that all LECs and CMRS providers provide reasonable interconnection to one another subject to reasonable rates, terms, and conditions. The rule regulates the conduct of LECs with market power in their interconnection relationships with CMRS providers. Historically, some LECs denied or restricted interconnection options available to CMRS providers, or required CMRS providers to compensate the LEC for LEC-originated traffic that terminated on the CMRS provider's network. Congress enacted section 332(c)(1)(B), and the Commission adopted section 20.11 codifying this provision, in order to curtail such practices.

Analysis

Status of Competition

In the *Ninth CMRS Competition Report*, the Commission noted that in February 2004, the Current Population Survey of the Census Bureau included a special supplement about wireless phone usage. On the basis of the information in this supplement, the Census Bureau estimates that 5 to 6 percent of all households now have wireless phones only..[119] The Commission also found that there is growing evidence that consumers are substituting wireless service for traditional wireline communications, and that an increasing number of mobile wireless carriers offer service plans designed to compete directly with wireline local telephone service.[120]

Advantages

Section 20.11 sets forth basic requirements for reasonable and nondiscriminatory interconnection arrangements between LECs and CMRS providers, but does not impose detailed standards or technical requirements. It reduces the potential for anti-competitive behavior, while affording carriers reasonable flexibility with respect to the terms and conditions of interconnection so long as the basic requirements of the rule are adhered to.

Disadvantages

Section 20.11 imposes certain transaction costs on carriers to ensure that their interconnection arrangements comply with the rule, and may lead to disputes and litigation between carriers about what constitutes "reasonable" interconnection under the rule. In addition, the overlap between this rule and the Part 51 interconnection rules may cause some duplication of regulatory requirements.

[119] *Ninth CMRS Competition Report*, FCC 04-216 at ¶ 212, n.575.

[120] *See id.* at ¶ 215.

Recent Efforts

The Commission has commenced a fundamental examination of all forms of intercarrier compensation.[121] The purpose of the rulemaking is to examine the existing patchwork of interconnection rules and to seek an approach that minimizes the need for regulatory intervention.

On September 30, 2002, the Commission sought comment on two petitions[122] that request rulings regarding the intercarrier compensation regime applicable to certain types of wireless traffic.[123] In the *T-Mobile Petition*, CMRS petitioners seek a declaratory ruling that the Commission "reaffirm that wireless termination tariffs are not a proper mechanism for establishing *reciprocal compensation* arrangements" between LECs and CMRS providers.[124] Petitioners contend that some rural LECs have filed state tariffs to collect reciprocal compensation for the termination of intra-MTA traffic originated by CMRS carriers. Petitioners assert that compensation for such traffic should be paid only when the LEC and CMRS carrier have entered into an interconnection agreement under section 251.

In the *US LEC Petition*, US LEC asks the Commission to "issue a ruling reaffirming that LECs are entitled to recover *access charges* from IXCs for the provision of access service on interexchange calls originating from, or terminating on, the networks of CMRS providers."[125] US LEC asserts that industry practice is for IXCs to pay access charges to LECs for this traffic, but that one IXC has recently declined to pay these charges.

The Commission has also sought comment on a petition for declaratory ruling filed by Sprint PCS (Sprint) that requests confirmation that: (1) an incumbent local exchange carrier (ILEC) may not refuse to load telephone numbering resources of an interconnecting carrier, and (2) an ILEC may not refuse to honor the routing and rating points designated by that interconnecting carrier.[126]

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[121] In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, *Notice of Proposed Rulemaking*, 16 FCC Rcd 9610 (2001) (*Intercarrier Compensation NPRM*).

[122] T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications, Inc., and Nextel Partners, Inc. filed their petition on September 6, 2002, and US LEC filed its petition on September 18, 2002. See In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Petition for Declaratory Ruling of T-Mobile USA, Inc., et al. (filed Sept. 6, 2002) (*T-Mobile Petition*); Petition of US LEC Corp. for Declaratory Ruling Regarding LEC Access Charges for CMRS Traffic (filed Sept. 18, 2002) (*US LEC Petition*).

[123] Comments Sought on Petitions for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic, CC Docket No. 01-92, *Public Notice*, 17 FCC Rcd 19046 (2002).

[124] In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, *Petition for Declaratory Ruling of T-Mobile USA, Inc., et al.* (filed Sept. 6, 2002).

[125] *US LEC Petition*. The Commission placed the petition into the record of CC Docket No. 01-92.

[126] In the Matter of Sprint Corp. Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs, CC Docket No. 01-92, *Petition of Sprint* (filed May 9, 2002) (*Sprint PCS Petition*).

All three petitions are part of the same docket as the *Intercarrier Compensation NPRM.*[127]

Comments

No comments were filed with respect to this rule.

Recommendation

Staff notes that issues relevant to this Biennial Review concerning section 20.11 are within the scope of the pending *Intercarrier Compensation* rulemaking proceeding (CC Docket No. 01-92)

[127] *See T-Mobile Petition, US LEC Petition,* and *Sprint PCS Petition.*

PART 20, SECTION 20.12 – RESALE

Description

Section 20.12(b)[128] provides that any carrier of Broadband PCS (except those C, D, E, and F block PCS licensees that do not own and control and are not owned and controlled by firms also holding cellular, A or B block licenses), Cellular Radio Telephone Service, or Specialized Mobile Radio (SMR) Services that offers real-time, two-way interconnected voice service with switching capability ("covered CMRS provider") must permit resale of its services.

The resale provision sunset on November 24, 2002.[129]

Comments

No comments were filed with respect to this rule.

Analysis

Because this rule (paragraph (b) of Section 20.12) is no longer in effect, no review is required as part of this Biennial Review. Staff recommends that paragraph (b) of this Section (and the last sentence of paragraph (a) defining the scope of paragraph (b)) be removed from the Code of Federal Regulations.

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[128] 47 C.F.R. § 20.12(b).

[129] *See* 47 C.F.R. § 20.12(b)(3). *See also* "Commencement of Five-Year Period Preceding Termination of Resale Rule Applicable to Certain Covered Commercial Mobile Radio Service Providers," CC Docket No. 94-54, *Public Notice*, 13 FCC Rcd 17427 (1998).

PART 20, SECTION 20.12 – ROAMING

Description

Roaming occurs when the subscriber of one CMRS provider utilizes the facilities of another CMRS provider with which the subscriber has no direct, pre-existing service or financial relationship to place an outgoing call, to receive an incoming call, or to continue an in-progress call. Roaming can be done "manually," in which a subscriber establishes a relationship with the host carrier usually by providing a credit card number, or "automatically," in which the subscriber does nothing more than turn on her telephone. Automatic roaming requires a pre-existing contractual agreement between the host and home carriers.

Section 20.12(c)[130] provides that any "covered CMRS" carrier must provide mobile radio service upon request to any subscriber in good standing, including roamers, while the subscriber is within any portion of the licensee's licensed service area, assuming that the subscriber is using technically compatible mobile equipment. The rule only mandates that carriers offer manual roaming, and does not require provision of automatic roaming. The manual roaming rule was adopted in 1996.[131]

Purpose

The purposes of the roaming provision are to ensure seamless service to wireless customers who roam out of their home service areas, and to prevent carriers from restricting competition and consumer choice through refusal to provide service to roamers.

Analysis

Status of Competition

Market forces are working to make roaming services, in particular automatic roaming, widely available and increasingly less expensive. Competition in the provision of roaming services has become increasingly competitive over time.[132] All the major nationwide carriers as well as many regional and small carriers offer nationwide or nearly nationwide plans and wide-area, single-rate calling plans that include roaming service to their subscribers at no additional charge. Buildout is widespread and continuously expanding. Most cellular carriers have reached automatic roaming agreements among themselves, even though section 20.12 only mandates manual roaming. However, some local and regional carriers have alleged that they have been unable to enter into roaming

[130] 47 C.F.R. § 20.12(c).

[131] *See* Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, *Second Report and Order and Third Notice of Proposed Rulemaking*, 11 FCC Rcd 9462 (1996).

[132] *See generally Seventh CMRS Competition Report*, 17 FCC Rcd at 13001.

agreements with competing carriers. Consumers' ability to roam may also be limited because they can only roam on networks that use the same technical standard (CDMA, TDMA, GSM, iDEN) as the home carrier.

Advantages

The manual roaming rule provides a clear standard and is minimally intrusive because it does not require CMRS carriers to reconfigure their systems to support technically incompatible roaming.

Disadvantages

For carriers, manual roaming obligations impose some administrative and technical burdens associated with caller verification, billing, and similar issues. For consumers, manual roaming imposes considerably higher fees than automatic roaming and has become an option of last resort due to its cumbersome registration process and difficulty of use.

Recent Efforts

At the time that it adopted the manual roaming rule, the Commission also issued a *Third Notice of Proposed Rulemaking* in CC Docket 94-54 asking (1) whether to sunset the manual roaming rule, and (2) whether to mandate automatic roaming for any carriers.[133] On August 28, 2000, the Commission released a *Third Report and Order and Memorandum Opinion and Order on Reconsideration*, in which it affirmed the existing manual roaming rule, with some modification and clarification.[134] On October 4, 2000, the Commission initiated a new rulemaking proceeding in WT Docket 00-193 to consider the impact of technological advances and the rapid expansion of the CMRS market since the *1996 Roaming Order* on issues relating to both automatic and manual roaming.[135] In its *Roaming Notice*, the Commission requested comment on whether it should adopt an automatic roaming provision for any CMRS system and whether it should retain, eliminate, or sunset the existing manual roaming requirement. This proceeding remains pending.

Comments

No comments were filed with respect to this rule.

[133] Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, *Second Report and Order and Third Notice of Proposed Rulemaking*, 11 FCC Rcd 9462 (1996).

[134] Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, *Third Report and Order and Memorandum Opinion and Order on Reconsideration*, 15 FCC Rcd 15975 (2000).

[135] Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Service, *Notice of Proposed Rulemaking*, 15 FCC Rcd 21628 (2000) (*Roaming Notice*).

Recommendation

Staff recommends no action in connection with this Biennial Review. WT Docket No. 00-193 is pending.

PART 20, SECTION 20.18 – 911 SERVICE

Description

Section 20.18 requires cellular carriers (as delineated in subpart (a) of the rule) to comply with requirements set by the Commission for the implementation of basic and Enhanced 911 services (E911).[136] As part of basic 911 service, carriers are required to deliver all 911 calls they receive to local Public Safety Answering Points (PSAPs), including for customers using Text Telephone (TTY) devices.

The rule provides for implementation of E911 in two phases. Under Phase I, carriers must provide 911 dispatchers with a callback number and the location of the cell site that received the call. In Phase II, carriers must provide Automatic Location Identification (ALI) capability, subject to specified accuracy and reliability standards, so that the 911 caller's location can be more accurately determined.

Implementation of Phase I was scheduled to begin on April 1, 1998, or within six months of a request by a (PSAP), whichever was later. The Phase II rules took effect on October 1, 2001. Under Phase II, carriers who employ network-based solutions must provide ALI service to at least 50 percent of their coverage area or population within six months of a PSAP request and to 100 percent within 18 months. Carriers employing handset-based technologies must begin deploying ALI-capable handsets by October 1, 2001 and complete deployment (to at least 95 percent of their customers) by December 31, 2005; the carriers must also begin delivering location information to PSAPs within six months of a request.

Purpose

The purpose of section 20.18 is to enhance public safety and facilitate effective and efficient law enforcement. Almost all PSAPs have the technology to automatically identify the location and number of wireline 911 calls. Prior to the adoption of section 20.18, however, a dispatcher receiving a wireless 911 call could only obtain information regarding the caller's location and callback number if the caller was able to provide it. Section 20.18 attempts to provide the same reliable and ubiquitous information for both wireless and wireline 911 calls.

Analysis

Status of Competition

Because the purpose of section 20.18 is to enhance public safety and facilitate effective and efficient law enforcement, general competitive developments in the services to which the rule applies do not affect the need for this rule.

[136] 47 C.F.R. § 20.18.